

Message Text

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FM AMEMBASSY ALGIERS

TO SECSTATE WASHDC 5423

INFO AMEMBASSY PARIS

AMEMBASSY RABAT

AMEMBASSY TRIPOLI

AMEMBASSY TUNIS

C O N F I D E N T I A L SECTION 1 OF 2 ALGIERS 2669

E.O. 11652: GDS

TAGS: PINT, PGOV, AG

SUBJECT: ALGERIAN CONSTITUTION: INSTITUTIONALIZING THE STATUS QUO

1. SUMMARY: DRAFT ALGERIAN CONSTITUTION GIVES PRESIDENT WIDE POWERS. DOCUMENT DOES NOT APPEAR TO REQUIRE APPOINTMENT OF VICE PRESIDENT OR PRIME MINISTER, AND IT QUITE POSSIBLE BOUMEDIENE WILL CONTINUE TO RULE FOR SOME TIME ABOUT AS HE HAS DONE IN RECENT PAST. NEW HIGH SECURITY COUNCIL COULD BE SUBSTITUTE FOR COUNCIL OF REVOLUTION. ROLE OF NATIONAL ASSEMBLY CIRCUMSCRIBED, AND FLN GIVEN LITTLE SPECIFIC POWER. END SUMMARY.

2. DRAFT ALGERIAN CONSTITUTION, WHICH MADE PUBLIC NOV 9, ENVISAGES VERY STRONG PRESIDENTIAL SYSTEM. AFTER DEVOTING SLIGHTLY OVER HALF ITS LENGTH TO SUMMARY RESTATEMENT OF PRINCIPLES ELABORATED IN NATIONAL CHARTER AND TO RIGHTS AND DUTIES OF PEOPLE, DUCMENT GETS DOWN TO BUSINESS IN ITS SECOND TITLE, "ON POWER AND ITS ORGANIZATION." THIS SECTION CONTAINS CHAPTERS ON POLITICAL, EXECUTIVE, LEGISLATIVE AND JUDICIAL FUNCTIONS, ON CONTROL, AND ON REVISION OF CONSTITUTION.

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3. PRESIDENT: PRESIDENT, WHO MUST BE AT LEAST 40

YEARS OLD, IS TO BE ELECTED BY UNIVERSAL DIRECT SUFFRAGE TO SIX-YEAR TEAM WITH PROVISION FOR REELECTION. AMONG HIS 18 SPECIFIC DUTIES ARE THAT OF SUPREME CHIEF OF ALL ARMED FORCES RESPONSIBLE FOR NATIONAL DEFENSE, PRESIDING COUNCIL OF MINISTERS, AND POWER TO CALL REFERENDUM ON IMPORTANT NATIONAL QUESTIONS. HE IS "INCARNATION OF STATE," AND REPRESENTS "UNITY OF POLITICAL DIRECTION BY PARTY AND STATE."

4. IN ADDITION TO FOREGOING DUTIES, PRESIDENT HAS FOLLOWING POWERS.

A. AUTHORITY OVER EXECUTIVE BRANCH: PRESIDENT NAMES COUNCIL OF MINISTERS AND CAN NAME (PEUT NOMMER) VICE PRESIDENT, WHO WILL "SECOND AND ASSIST" HIM, AND PRIME MINISTER. DUTIES OF LATTER TWO OFFICIALS NOT SPELLED OUT ALTHOUGH PRESIDENT IS GIVEN OPTION TO DELEGATE SOME OF HIS POWERS TO VICE PRESIDENT. IN CASE OF DEATH OR RESIGNATION OF PRESIDENT, HIS SUCCESSOR, FOR 45-DAY PERIOD PRIOR TO NEW ELECTION, IS PRESIDENT OF NATIONAL POPULAR ASSEMBLY, NOT VICE PRESIDENT. ASSEMBLY PRESIDENT MAY NOT BE ELECTED PRESIDENT OF REPUBLIC. RUMOR ALREADY CIRCULATING THAT BOUMEDIENE MAY NOT NAME VICE PRESIDENT, PRIME MINISTER, OR MINISTER OF DEFENSE UNTIL AFTER FLN CONGRESS IN THE SPRING. WE INFORMED BY FOREIGN MINISTRY OFFICIAL THAT "MOST CERTAINLY" BOUTEFLIKA WILL BE EITHER PRIME MIN OR VP AND WILL LEAVE FOREIGN MINISTRY. OFFICIAL ADDS, HOWEVER, THAT BOUTEFLIKA UNLIKELY TO BE NAMED PRIME MIN OR VP UNTIL AFTER FLN CONGRESS NEXT SPRING.

B. STATE OF EXCEPTION: CONSTITUTION PROVIDES FOR TWO STATES OF EXCEPTION:

I. IN CASE OF OVERRIDING NECESSITY, I.E., WHEN COUNTRY'S INSTITUTIONS INDEPENDENCE OR TERRITORIAL INTEGRITY THREATENED, PRESIDENT MAY DECLARE STATE OF EXCEPTION AFTER CONSULTING PARTY AND GOVERNMENT. ALTHOUGH CONSTITUTION DOES NOT SPELL OUT CLEARLY WHAT STATE OF EXCEPTION MEANS, PRESIDENT'S POWERS APPEAR CONFIDENTIAL

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TO INCREASE IN THIS SITUATION.

II. WAR: AFTER CONSULTING PARTY, CALLING GOVERNMENT, AND HEARING VIEW OF HIGH SECURITY COUNCIL, PRESIDENT MAY DECLARE WAR, EITHER IN SELF-DEFENSE OR FOR LIBERATION OF OTHER PEOPLES. HAVING INFORMED NATION OF THIS, HE "ASSUMES ALL POWER."

C. CONTROL OVER JUDICIARY: SUPERIOR COUNCIL
OF JUDICIARY, AN ORGANIZATION WHICH WE UNDERSTAND
ALREADY IN BEING, SEEMS IN NEW CONSTITUTION TO GIVE
PRESIDENT CONSIDERABLE POWER TO INTERVENE IN JUDICIAL
AFFAIRS. PRESIDENT PRESIDES THIS BODY WHICH DEALS
NOT ONLY WITH PRESIDENTIAL ACTS OF CLEMENCY BUT ALSO
WITH NOMINATION, TRANSFER AND DISCIPLINING OF JUDGES.

5. LEGISLATURE: CONSTITUTION PROVIDES FOR UNICAMERAL
NATIONAL POPULAR ASSEMBLY, ELECTED FOR FIVE-YEAR TERM
AND WITH HALF ITS MEMBERS MADE UP OF FARMERS OR
WORKERS (WORKER DEFINED AS SOMEONE WHO LIVES BY HIS
OWN MEANS AND WHO EMPLOYS NO ONE). NUMBER OF DEPUTIES AND THEIR
CONSTITUENCIES NOT DEFINED. ASSEMBLY HAS POWER TO INITIATE
LEGISLATION AND TO PASS ON WIDE RANGE OF LAWS INCLUDING NATIONAL
PLAN, STATE BUDGET, AND TREATIES. IT MAY OVERRIDE, BY TWO-
THIRDS VOTE, PRESIDENTIAL VETO OF A LAW. ASSEMBLY MAY SET
UP COMMISSION OF INQUIRY TO LOOK INTO ANY QUESTION
OF GENERAL INTEREST AND HAS POWER OF CONTROL OVER
ALL TYPES OF SOCIALIST ENTERPRISES. ASSEMBLY'S
POWERS OF CONTROL TO BE SPELLED OUT IN LATER LEGISLATION.

6. BEYOND THIS, ASSEMBLY'S POWER LIMITED.

A. IT DOES NOT HAVE POWER TO CENSURE PRESIDENT
AND LATTER NOT REQUIRED TO CHOOSE MINISTERS FROM
ASSEMBLY'S RANKS. (SHORT-LIVED 1963 CONSTITUTION
GAVE ASSEMBLY CENSURE POWER, REQUIRED THAT TWO-THIRDS
OF COUNCIL OF MINISTERS BE ASSEMBLY MEMBERS, AND
SPECIFICALLY REFERRED TO ASSEMBLY'S PRESIDENT AS
SECOND MAN IN NATION.)

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C O N F I D E N T I A L SECTION 2 O F 2 ALGIERS 2669

B. IT SEEMS TO HAVE NO PARTICIPATION IN
DECLARATION OF STATE OF EXCEPTION OR OF WAR.

C. IT DOES NOT HAVE POWER TO GIVE OR WITHHOLD
CONFIDENCE IN COUNCIL OF MINISTERS.

D. PRESIDENT MAY CALL FOR ITS DISSOLUTION FOR
NO SPECIFICALLY STATED REASON AFTER MEETING WITH
PARTY DIRECTION AND GOVERNMENT. IN SUCH CIRCUMSTANCES,
NEW ELECTIONS MUST BE HELD WITHIN THREE MONTHS.

E. PRESIDENT CAN PROMULGATE DECREES OR LAWS
WHEN ASSEMBLY NOT IN SESSION, WITH ONLY PROVISIO
THAT ASSEMBLY RATIFY THESE LAWS IN ITS NEXT SESSION.

7. PERSONAL AND JUDICIAL FREEDOMS: CONSTITUTION
PROVIDES WIDE RANGE OF PERSONAL FREEDOMS:

A. PRESUMPTION OF INNOCENCE

B. REPARATION OF JUDICIAL ERROR

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C. PERSONAL INVIOABILITY

D. PRIVACY OF LIFE, CORRESPONDENCE AND HOME

E. FREEDOM FROM UNLAWFUL PURSUIT, ARREST OR
DETENTION

F. RIGHT TO RELEASE FROM PREVENTATIVE DETENTION
AFTER 48 HOURS

G. FREEDOM OF CONSCIENCE, OPINION, INTELLECTUAL
CREATION, EXPRESSION AND ASSOCIATION

H. FREEDOM TO TRAVEL WITHIN AND WITHOUT ALGERIA

I. FOR WORKERS IN PRIVATE SECTOR, RIGHTS TO STRIKE.
JUDGES ALSO SAID TO BE RESPONSIBLE ONLY TO THE LAW.

8. AT SAME TIME, CONSTITUTION CONTAINS NUMEROUS WARNINGS AGAINST ACTS INIMICABLE TO SOCIALISM, REVOLUTION AND CONSTITUTION. ALSO, SOME RIGHTS, NOTABLY THOSE OF ASSOCIATION AND STRIKING, ARE TO BE EXERCISED "WITHIN FRAMEWORK OF LAW." RESTRICTIONS BINDING ON INDIVIDUALS AND ON MEMBERS OF JUDICIARY.

9. HIGH SECURITY COUNCIL: CONSTITUTION ESTABLISHES HIGH SECURITY COUNCIL, CHAIRED BY PRESIDENT, WHICH GIVES ADVICE ON QUESTIONS RELATIVE TO NATIONAL SECURITY. ITS FUNCTIONS TO BE SPELLED OUT IN IMPLEMENTING LEGISLATION.

10. ROLE OF PARTY: AS IN NATIONAL CHARTER AND OTHER REGIME PARLANCE, FLN GIVEN HIGH, THEORETICAL POSITION. CONSTITUTION'S CHAPTER ON POLITICAL FUNCTION DESCRIBES ALGERIAN INSTITUTIONAL SYSTEM AS BASED ON UNIQUE PARTY WHICH IS FLN. DOCUMENT ALSO REQUIRES PRESIDENT TO CONSULT, OR AT LEAST TO INFORM, TOP LEVEL OF PARTY ON IMPORTANT DECISIONS, NOTABLY DECLARATION OF WAR OR STATE OF EXCEPTION AND DISSOLUTION OF NATIONAL ASSEMBLY. HOWEVER, THERE IS CONFIDENTIAL

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NO CONSTITUTIONAL REQUIREMENT THAT HIGH OFFICIALS BE PARTY MEMBERS, AND ONE ARTICLE OF DOCUMENT NOTES THAT PARTY AND STATE ORGANISMS ARE TO FUNCTION SEPARATELY AND IN COMPLEMENTARITY.

11. CHANGES IN DRAFT: WE UNDERSTAND THAT SEMINAR AND NATIONAL CONFERENCE ON CONSTITUTION HELD FROM NOV 4-6 MADE VERY FEW SUBSTANTIVE CHANGES IN DOCUMENT'S TEXT. MOST IMPORTANT WERE ADDITION OF MENTION OF PRIVATE ENTERPRISE WORKERS' RIGHT TO STRIKE, AND OF RIGHT TO ASSOCIATION. RIGHT TO STRIKE IN PRIVATE ENTERPRISE IS ALREADY SPELLED OUT IN 1975 LABOR LAW.

12. COMMENT: NEW CONSTITUTION APPEARS TO INSTITUTIONALIZE STATUS QUO. BOUMEDIENE, IT WOULD SEEM, WILL BE ABLE TO CONTINUE RULING MORE OR LESS AS HE HAS DONE IN RECENT PAST.

13. HIGH SECURITY COUNCIL COULD SERVE AS SUBSTITUTE FOR COUNCIL OF THE REVOLUTION. IT IS LIKELY THAT PRESENT COUNCIL OF THE REVOLUTION MEMBERS WILL RETAIN THEIR PRESENT IMPORTANT POSITIONS IN ALGERIAN ELITE AND MAY BE UNHAPPY AT SEEING COUNCIL ITSELF DISAPPEAR ABRUPTLY FROM SCENE. AT SAME TIME, DIFFICULT TO RETAIN COUNCIL OF REVOLUTION ONCE PERMANENT STATE INSTITUTIONS

IN PLACE.

14. NATIONAL POPULAR ASSEMBLY WILL BE NEW ELEMENT IN EQUATION AND CONSIDERABLE ORGANIZATIONAL ACTIVITY WILL BE REQUIRED TO GET IT INTO PLACE BY END OF JANUARY. HOWEVER, ASSEMBLY'S ROLE CIRCUMSCRIBED AND ITS SEPARATION FROM EXECUTIVE BRANCH, AND SPECIFICALLY FROM COUNCIL OF MINISTERS, WILL MAKE IT DIFFICULT FOR DEPUTIES TO DEVELOP POWER BASE.

15. FINALLY, CONSTITUTION GIVES FLN LITTLE SPECIFIC POWER TO ENHANCE ITS OWN POSITION. WHAPGLUBLKPARTY WWBL PLAY IS AGAIN MATTER FOR PRESIDENTIAL DETERMINATION.PARKER

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